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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of	)	
	)	
AT&T's Petition for Rulemaking	)	RM - 8355
on Market Entry and Regulation of	)	
International Carriers with	)	
Foreign Carrier Affiliations	)	

OPPOSITION TO AT&T'S PETITION FOR RULEMAKING

CABLE & WIRELESS, INC.

Willkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20036
(202) 328-8000

Its Attorneys

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SUMMARY

AT&T's petition for rulemaking seeks a comprehensive rulemaking proceeding to address whether foreign owned or controlled companies should be allowed to enter the U.S. telecommunications marketplace. Because AT&T's petition merely rehashes old arguments previously addressed and rejected by the Commission, CWI opposes the petition for rulemaking.

Under the standard suggested by AT&T -- "comparability" -- it would be virtually impossible for foreign owned or controlled carriers to enter the U.S. telecommunications market. No one should expect, let alone require, another country's telecommunications policies to "mirror" the U.S. Such a rigorous standard would only serve to deny consumers the benefits of competitively provided international services and frustrate the significant progress made by the Commission over the last decade to further liberalize both U.S. and foreign markets.

Moreover, despite AT&T's claims to the contrary, the question of whether to allow foreign-owned countries to enter the U.S. market has squarely been addressed by the Commission. Although AT&T has tried on numerous occasions to argue for an exact "comparability" standard, AT&T has failed each and every time. AT&T's petition for rulemaking is just another attempt to raise these old arguments.

Not only has the FCC decided whether to permit U.S. entry, but it has also decided the terms by which entry will be governed. The Commission has carefully crafted rules to guard

against anticompetitive conduct. That these rules are adopted on a case-by-case basis only illustrates the need to take into account the different market structures that exist in each country. Thus, much to AT&T's dismay, the Commission has clearly chosen to confine the extreme step of limiting entry opportunities to exceptional circumstances.

In short, the Commission's policies regarding foreign market entry are, for the most part, very clear. No comprehensive rulemaking is required to revisit these issues very recently reviewed and confirmed by this agency.

Nevertheless, CWI believes that improvements should be made regarding prompt resolution of Section 214 applications and the articulation of the scope of Section 310(b). While the Section 214 process is an effective tool to impose conditions upon foreign carrier entry, it takes the Commission far too long to act on these applications. The Commission should therefore act to ensure that no application remains pending for more than six months.

Considerable uncertainty also exists regarding the applicable rules for foreign carrier participation in the U.S. telecommunications market via radio-based facilities. While CWI supports a case-by-case approach in other international matters, it is because general policies have been established. However, in the context of Section 310(b), the ad hoc history of the FCC's interpretations and enforcement of Section 310(b) has made FCC policies so unclear as to act as a virtual bar to expansion based on radio technologies. In particular, it is not clear when a "waiver" of Section 310(b)(4) might be appropriate and available. CWI agrees with AT&T to the extent its petition seeks a proceeding to determine the scope of Section 310(b) as well as the availability of Section 310 waivers.

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OPPOSITION TO AT&T'S PETITION FOR RULEMAKING

Cable & Wireless, Inc. ("CWI"), by its attorneys, hereby files this Opposition to AT&T's Petition for Rulemaking filed on September 22, 1993.[1] As a U.S. carrier indirectly owned by a United Kingdom-based company, CWI has a direct interest in the issues raised by AT&T.

In its petition for rulemaking, AT&T urges the Commission to initiate a comprehensive rulemaking proceeding to consider whether foreign owned or controlled companies should be allowed to enter the U.S. telecommunications marketplace. Suggesting a set of rules that would de facto if not de jure preclude entry (and perhaps even require divestitures of existing market participants), AT&T insists that a rulemaking proceeding is required because these issues are somehow new. Because the Petition merely seeks to review settled issues, the initiation of

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[1] Public Notice by the Commission was published on October 1, 1993, Report No. 1975.

a rulemaking would serve only to delay the implementation of recently established policy initiatives and to forestall further liberalization of both U.S. and foreign markets. This result would strongly defeat U.S. consumer interests in competitively provided international services.

I. AT&T'S PETITION FOR RULEMAKING WOULD STALL FURTHER LIBERALIZATION OF THE INTERNATIONAL LONG-DISTANCE MARKETPLACE

CWI has been an active proponent of, and with affiliated companies, a participant in, the worldwide trend toward liberalization of telecommunications services in developed countries. These efforts have brought significant benefits to consumers through lower priced international telephone calls and increased service quality. AT&T's petition for rulemaking, however, would serve to frustrate this process and stall further liberalization.

AT&T seeks to rehash old arguments. It insists that the issue of entry by foreign carriers has yet to be decided, notwithstanding the fact that many U.S. consumers have for many years been served by a wide variety of foreign-owned carriers certified by the FCC. It more specifically seeks that entry by such companies be niggardly metered and thereafter regulated by reference to "comparable" opportunities for U.S. companies abroad. Here, too, the defining policies have already been established by the FCC. That AT&T is unhappy with these policies is apparent; it seems doubtful, however, that AT&T is unaware of their existence. Thus, the "need" for a rulemaking is completely contrived.

AT&T's use of the word "comparability" throughout its petition for rulemaking is extremely misleading. What AT&T is really asking for is "mirror reciprocity." In numerous proceedings, AT&T has urged the Commission -- unsuccessfully -- to apply such a strict -- indeed, impossible standard in various regulatory decisions affecting the U.S. international telecommunications market. Although the terminology has changed in AT&T's petition, the substance of its position remains exactly the same.

The argument made by AT&T to preclude or limit entry, based upon the absence of "mirror" conditions between the U.S. and the home market of the foreign carrier, amounts to what has been called "procedural protectionism." George P. Shultz, Turmoil and Triumph at 195 (1993). In practice, no carrier would ever be able to satisfy such a rigorous standard; in reality, access to the U.S. telecommunications market would be closed to all foreign carriers.

It is highly unrealistic to think that any carrier will be able to prove that "mirror" conditions in the foreign country exist. Every country's regulatory regime is marked by its own idiosyncracies. No country in the world can truly be deemed to mirror the details of the U.S. telecommunications environment.

Further, comparisons with some aspects of foreign telecommunications will not be congenial to the U.S. The fifty-one state jurisdictions overseeing intrastate services in the U.S. provides just one dimension of the futility of such a policy. In practice, it will be literally impossible to achieve a standard of mirror reciprocity. Instead, such a standard would close off the U.S. telecommunications marketplace to foreign-owned companies, and ultimately, close foreign service market opportunities to U.S. companies.

Notwithstanding substantial inroads by MCI and Sprint in the negotiation of operating agreements with many foreign carriers, AT&T still enjoys a dominant market share that appears to hold steady after the initial effects of direct service competition have taken their toll. "Trends in the International Communications Industry Through 1991" at 28, FCC, June 1993.[2] Even on routes where direct competition occurs, AT&T appears to have substantial advantages. Additional entry on a facilities-based, direct service basis has not occurred on any significant level. U.S. carriers below the top three generally have not had sufficient volume to negotiate their own direct service

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[2] AT&T's market share for IMTS in 1991 was a strong 74.5%. According to the FCC, AT&T typically has "lost 15% to 20% of the international telephone service market share two or three years after new carriers began providing service to a country." "Trends in the International Communications Industry Through 1991" at 31, FCC, June 1993.

arrangements, and thus are limited to reselling AT&T, Sprint or MCI services.

Because of customer demand for one stop shopping and other global trends, one substantial source of future competition in the U.S. market resides in telecommunications companies outside the U.S. By demanding that such companies be halted at the U.S. shore, so that the Commission can commence a detailed analysis of each home market of each such company to assess whether it is the mirror equivalent of the U.S. regulatory environment, AT&T would deny benefits to consumers.

"Mirror reciprocity" could have severe consequences for U.S. telecommunications firms. The painstaking comparisons AT&T seeks will not always work to the benefit of the U.S. Comparing the FCC's 214 certificates (for any international service) and the U.K. national and international facilities-based PTO license, for example, there are substantial areas where U.S. carriers would have more opportunities abroad than would a U.K. carrier in the U.S. In particular, the U.K. license would grant U.S. carriers exceptionally broad authority to: (1) construct networks within the U.K.'s jurisdiction to provide facilities-based public services worldwide without additional application; (2) construct and land submarine cables within the U.K.'s jurisdiction; and (3) have direct access to satellite systems, including Intelsat. Inviting foreign policymakers to so closely scrutinize U.S. regulatory conventions could result in rather unfavorable decisions, at least in the context of select services.

From the admittedly parochial interests of CWI, we are especially concerned that AT&T's request for a comprehensive rulemaking on the issue of foreign entry and "mirror reciprocity," even if it is not ultimately adopted, will itself serve to slow down even further or halt altogether Commission consideration of pending Section 214 applications. CWI has had pending for nearly two years applications to provide direct service to and from countries where it has an affiliation with a telecommunications provider. Surely two years has been more than enough time to consider and deliberate over the issues therein raised. Certainly these issues have in any event been resolved in other rulemaking proceedings already completed. And certainly, another rulemaking proceeding is unnecessary to rehash these debates.

II. EXISTING FCC POLICIES SQUARELY ADDRESS THE ISSUE OF FOREIGN MARKET ENTRY

AT&T's fundamental premise is that the Commission has not resolved the initial question of whether to allow foreign-owned companies to enter the U.S. international services marketplace. This is simply not so. Foreign owned carriers have had access to the U.S. telecommunications markets for a long time. Since 1960, for example, FTCC -- a French-owned carrier -- has operated in the United States as one of the principal international record carriers. Since the late 1970s, it was able to provide both record and voice services to and from numerous gateways in the U.S. See FTCC Order, File No. I-T-C-2650, 71 FCC 2d 393, 394 (1979).

Participation by foreign controlled companies in international services by resale is as old as international resale itself. Resellers with foreign affiliations such as Consortium Communications, Inc. (CCI) have provided international services to and from the U.S. via resale of facilities-based common carrier services for many years.[3] And of course, CWI, through its predecessor companies TDX and Cable & Wireless Communications, Inc., has been an authorized foreign owned carrier providing international services over most of this same period.

During this same time period, U.S. investment overseas significantly increased. AT&T's investment alone includes a 20% interest in Unitel, a 19.5% interest in the Ukrainian monopoly carrier, and a joint venture with GTE holding a 40% in the monopoly telephone company in Venezuela.

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[3] See Consortium Communications International, Inc.; Application for Consent to Transfer Control from Air Call plc to GTE Telenet Inc., File No. ENF-86-07 (released April 30, 1986). International resale first began when AT&T unilaterally amended its IMTS and private line tariffs to remove its prohibitions against resale. See, e.g., Western Union International, Inc., Tariff FCC No. 27, Sections 1.3.1.1 and 1.3.3.1 original pp 9 and 11 (effective April 1, 1990); see also International Private Line Resale Order, 7 FCC Rcd 559 (1991).

Particularly in the U.K., the opportunities for entry by U.S. firms is at least as good as those available to U.K. operators in the U.S. One could argue that no country has deregulated its telecommunications equipment and services markets at the pace of the United Kingdom. In the United Kingdom, for example, there is no counterpart to Section 310(b). In every circumstance, telecommunications policy in the U.K. is made without regard to the ultimate national parentage of the service provider. U.S. operators have been licensed to provide cellular, paging, and PCS services. Furthermore, U.S. cable television and Bell Operating Company interests dominate the U.K. cable television industry and are also permitted to offer local exchange services. In August 1990, NTIA described the U.K. as "one of the most open and liberalized telecommunications markets in the world." See "U.S. Telecommunications in a Global Economy: Competitiveness at a Crossroads," U.S. Dept. of Commerce at 152 (Aug. 1990). In 1991, the U.S. enjoyed a $256 million telecommunications trade surplus with the U.K.

Notwithstanding the openness of both U.S. and U.K. policies, AT&T has tried and failed to block entry by foreign companies. It unsuccessfully tried its argument for mirror reciprocity only last year when Telefonica sought and was granted authority to buy PRTC. Telefonica Acquisition Order, 8 FCC Rcd 106 (1992). AT&T therein urged the Commission to withhold action until a "comprehensive framework" -- that is, a rule of mirror reciprocity -- for foreign market entry could be established. Id. at 108. In authorizing the transfer, the Commission expressly "decline[d] to apply a strict policy of reciprocal entry" and noted its firm preference for encouraging greater liberalization in foreign markets:

> The public interest does not necessarily require that we deny the facilities-based entry of a U.S. affiliate of a foreign carrier where, as here, it appears we can craft nondiscrimination safeguards sufficient to protect U.S. carriers in their provision of U.S. international service from discrimination that might occur as a result of such entry and the balance of public interest considerations weigh in favor of granting the applications.

Id. at 109.

AT&T's petition for rulemaking makes much of the fact that the Commission crafted additional safeguards in the Telefonica Acquisition Order to protect U.S. carriers from market abuse. See AT&T Petition at 29-30. But this fact serves only to illustrate that: 1) the entry question in general has been concluded in favor of an open U.S. market, with simultaneous success in accessing foreign markets; and 2) proceeding on a case-by-case basis with tailored safeguards and conditions applicable to the special circumstances of the situation is a feasible, efficient approach.

The FCC has decided not only whether foreign carriers may participate in the U.S., it has carefully crafted rules to govern how foreign carriers may so participate. In doing so, it has repeatedly sought to strike the appropriate balance between the sometimes competing concerns that flow from entry by foreign affiliated monopolies. On the one hand, the FCC has expressly recognized the obvious benefits to consumers in permitting foreign owned companies to access the U.S. telecommunications markets, including lower prices for international and domestic services, reduced costs, and increased customer choice. On the other hand, the Commission has articulated longstanding concerns over the barriers to entry into foreign markets where telecommunications providers have largely enjoyed state-protected monopolies. The FCC has recognized that restrictive foreign telecommunications policies, creating incentives and opportunities for whipsawing and discrimination, could undermine its traditional regulatory objectives of achieving efficiency and equity.

The overall solution to these concerns established by the FCC, as articulated and developed through a series of rulemakings and individual application grants, has been to permit entry subject to regulatory safeguards designed to directly enjoin anticompetitive conduct.[4] The Commission has plainly

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[4] The Commission has a long history of preferring to adopt policies that promote an open telecommunications market where appropriate safeguards can be developed and implemented. Computer III Inquiry, Report and Order, 104 FCC 2d 958, 998-1012 (1986); Computer III Remand Proceedings, Report and Order, 6 FCC Rcd 7571 (1991). For example, in the Computer III and Open Network Architecture proceedings, the Commission allowed the Bell (continued...)

opted to confine the extreme step of limiting entry opportunities to exceptional circumstances.[5]

AT&T couches its petition for rulemaking in terms of the "need" to establish policies to address foreign market entry issues. AT&T may not agree with the Commission's rulings in this area, but it is false to conclude, as AT&T does, that such policies do not exist or are not clearly defined. Over the course of more than a decade, the FCC has crafted special rules and policies to adapt to the different market structures of foreign markets. It has further acted upon specific applications to implement these rules and policies. Whether acting in a general rulemaking or on a specific request for authority, the FCC has wisely deployed a public interest analysis balancing many factors, including the extent to which the foreign market is "closed" to U.S. firms. But other factors, which AT&T apparently believes are less relevant, are equally important, such as the potential for increased competition for international services,

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[4](...continued) Operating Companies to enter the enhanced services markets subject to compliance with cross-subsidization and discrimination safeguards. Id.; Filing and Review of Open Network Architecture Plans, Memorandum Opinion and Order, 4 FCC Rcd 1 (1988).

[5] Unfortunately, however, inaction by the FCC has sometimes had a similar effect. See CWI's pending Section 214 applications, File Nos. I-T-C-92-065 and I-T-C-92-066, to provide facilities-based switched and private line services to the U.K. and Hong Kong, respectively. Public Notice of the applications were published on December 26, 1991, Report No. I-6642.

lower prices and improved service quality, and the achievement of further liberalization of the foreign market.

A review of the principal policies and rules regarding foreign participation in U.S. international markets reveals the comprehensiveness of the agency's undertaking to date.

Trade Proceeding. During the 1980s, the Commission initiated a rulemaking proceeding to consider expanding its role in developing U.S. international trade policy on telecommunications. Regulatory Policies on International Telecommunications, Notice of Inquiry and Notice of Proposed Rulemaking, 2 FCC Rcd 1022 (1987). Notwithstanding explicit concerns over the closed nature of some foreign markets, the FCC ultimately rejected proposals to close the U.S. markets as a solution to this problem. Report and Order, 4 FCC Rcd 7387 (1988). Rather, the Commission established reporting and notification requirements from foreign-owned carriers as an initial means of detecting and safeguarding against discrimination and other market abuses. Order on Reconsideration, 4 FCC Rcd 323, 326 (1989).

International Competitive Carrier. Concerns regarding the opportunities available to foreign-owned carriers to engage in anticompetitive or discriminatory practices were comprehensively addressed through the rulemaking process in the Commission's International Competitive Carrier proceeding. In 1985, the FCC chose to deal with these concerns by classifying all foreign-owned carriers as dominant in their provision of all international common carrier services to all foreign markets. This decision was intended to encourage the negotiation of additional operating agreements as well as to provide the FCC with heightened scrutiny of the activities of such carriers as a means of safeguarding against undesirable conduct. 102 FCC 2d 812 (1985).

International Common Carrier. Only last year, the Commission revisited and modified these rules. Regulation of International Common Carrier Services, 7 FCC Rcd 7331 (1992). In more closely targeting the regulatory safeguards, the FCC relied upon recent changes in U.S. international telecommunications, including the progress that had been made by U.S. carriers in securing operating agreements for international message toll service, the efforts by foreign governments to privatize, and the achievements by MCI and Sprint in competing with AT&T in the top foreign markets. Upon a highly contested record, the Commission redirected regulation and applied the classification on the basis of a route-by-route analysis in those instances where a relationship between a U.S. international carrier and a foreign carrier presents substantial risk of market abuse. Id.

In relaxing its rules, the FCC recognized the concerns raised by AT&T and others that significant barriers to entry still existed at the foreign end. But significantly, the Commission concluded that "the long-term solution to foreign market power, which can be abused with or without a U.S. affiliate, is greater liberalization in foreign markets." Id. at 7332. Further, dominant status would be refined and applied through case by case determination of a carrier's "affiliation" (control) with a foreign carrier holding "bottleneck" facilities. This case-by-case application process has been used successfully since its promulgation. See e.g., IDB Communications Group, Inc., File No. I-T-C-93-100-TC, 8 FCC Rcd 5222 (1993); Atlantic Tele-Network Co., File No. I-T-C-89-130, 4 FCC Rcd 8302 (1989). While AT&T may not agree with the Commission's solution, and in fact has delayed implementation by filing pleadings on extraneous issues, the general principles were nevertheless resolved.

International Accounting Rates (Private Line Resale). The issue of restricted foreign access was also raised in the International Accounting Rates proceeding with respect to the resale of international private lines. Consistent with the ruling in International Competitive Carrier, the FCC concluded that a more liberal policy toward the resale of international private lines to provide switched services would allow new entrants in the market as well as exert downward pressure on international accounting rates. Regulation of International Accounting Rates, CC Docket No. 90-337, First Report and Order, 7 FCC Rcd 559 (1991). Aware of the potential to undermine the settlement process and to disadvantage U.S. carriers foreclosed from foreign markets, the Commission announced a policy of allowing U.S. carriers to resell private lines only to those countries determined by the FCC to permit equivalent resale opportunities in the other direction. Id. at 560.

In adopting a rough equivalence standard, the Commission correctly recognized that it would be virtually impossible for it to specifically identify the factors that should be considered in the application of the equivalency test because market telecommunications market structures and physical telecommunications infrastructure widely differ from country to country. See AT&T Petition at 25. A better approach, the Commission found, would be to analyze equivalency issues on a case-by-case basis through the Section 214 process:

> [W]e decline to adopt . . . and issue 'criteria' of openness to determine whether equivalent opportunities exist. A demonstration of equivalent opportunities through a showing in a Section 214 application may include a wide range of issues . . . such as: (1) licensing; (2) tariffing; and (3) other terms and conditions associated with the provision of service.

Id. at 562 (footnotes omitted). That case-by-case approach is now being implemented. For example, in authorizing the resale of international private line and switched services between the U.S. and Canada, the Commission prohibited the routing of U.S. overseas traffic through Canada in response to concerns raised by AT&T that Canadian policies do not permit the routing of U.S. traffic through Canada to third countries. See fONOROLA Order, 7 FCC Rcd 7312, 7313-14 (1992). Yet, even with this prohibition, AT&T is seeking reconsideration of the Commission's decision. Petition for Reconsideration by AT&T, File Nos. I-T-C-91-103 and I-T-C-91-050 (filed December 4, 1992).

Other applications now pending seek similar rulings with respect to other foreign countries on a case-by-case basis. CWI, for example, recently filed a Section 214 application to resell private lines between the United States and Canada, the United Kingdom, Australia, and Sweden, demonstrating that each country affords equivalent resale opportunities to U.S. based carriers. Application of Cable & Wireless, Inc., File No. I-T-C-93-288 (filed September 9, 1993). AT&T's urgings for a far-flung, ill-defined rulemaking will not advance the resolution of the specific issues raised in the application. The Commission has correctly concluded that such an approach would not result in the kind of issue-specific determinations that are required. Although not to AT&T's satisfaction, the general issue of international private line resale (by foreign or domestic companies) has been resolved.

* * *

The Commission's policies regarding foreign market entry are, for the most part, very clear. No comprehensive rulemaking is required to revisit these issues very recently reviewed and confirmed by this agency. Moreover, AT&T is simply wrong on the merits. Despite AT&T's repeated attempts to persuade the Commission otherwise, the public interest does not require a finding of exact equivalence in order to allow foreign controlled carriers into the U.S. telecommunications market. While AT&T correctly notes that the closed nature of some foreign markets presents serious concerns to the Commission, the answer cannot be to simply close up the U.S. markets. There are other factors that the Commission should (and does) consider when balancing the interests involved. AT&T, however, would have the public interest determination turn principally on the existence of one factor -- mirror reciprocity. But the Commission has already addressed, and rejected, that approach. AT&T has failed to present any new substantive arguments in support of its petition. Accordingly, AT&T's petition for rulemaking should be denied.[6]

III. IMPROVEMENTS SHOULD BE CONSIDERED REGARDING PROMPT 214 PROCESSING AND ARTICULATION OF THE PERMISSIBLE SCOPE OF SECTION 310(b)

CWI does not mean to suggest that the FCC's international policies are by any means unsusceptible to improvement. Indeed, CWI has previously urged that the Commission should modify its 214 application procedures and

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[6] It is within the FCC's discretion to proceed through rulemaking or upon particular applications on issues that have been fully presented. See Chisholm v. FCC, 538 F.2d 349, 364-365 (D.C. Cir. 1976), cert. denied, 429 U.S. 890 (1976); see also SEC v. Chenery Corp., 332 U.S. 194, 203 (1947). In the case of international matters, the Commission has established its general policies through rulemakings, and now clearly prefers to proceed on an ad hoc basis. Thus, AT&T's arguments regarding the BT/MCI merger can be considered in the individual proceeding. See generally discussion at Section III, infra.

clarify the full permissible scope of Section 310(b). See Comments of CWI at 9-12, 17-19 before the NTIA, Comprehensive Examination of U.S. Regulation of International Telecommunications Services, Docket No. 921251-2351 (filed April 20, 1993).

The Section 214 application process by which the FCC regulates entry into the U.S. markets for international common carrier services has been and will continue to be an effective device to impose rational conditions upon foreign carrier entry. General mechanisms to safeguard against discrimination of U.S. carriers have included, for example, requirements that U.S. international carriers accept only their proportionate share of return traffic and agree with their foreign correspondent to equally divide the accounting rate. Regulation of International Accounting Rates, Second Report and Order, CC Docket No. 90-337, 7 FCC Rcd 8040 (1992). In specific 214 applications, the Commission will tailor the nondiscrimination safeguards to the individual circumstances of the situation. See, e.g., Telefonica Acquisition Order, 8 FCC Rcd 106 (1992) (prohibiting, inter alia, special concessions from any foreign carrier or administration with respect to traffic or revenue flows or the routing of traffic to or from third countries without Section 214 authorization); Atlantic Tele-Network Authorization, File No. I-T-C-90-153, Order, Authorization and Certificate, 6 FCC Rcd 6529 (1991). Because the continued authority to operate is contingent upon compliance with these conditions, the Section 214 process provides substantial leverage for the FCC to enforce its policies.

The problem that has arisen with Section 214 thus lies not with the structure, but rather with the failure to act on the applications in a timely manner. CWI, for example, filed for direct service authority to provide switched and private line services on a facilities basis between the U.S. and the U.K. and between the U.S. and Hong Kong in December of 1991. These applications are still pending. The Commission should act promptly to ensure that no application remains pending for more than six months, and certainly not for two years.[7]

Considerable uncertainty has also been created regarding the applicable rules for foreign carrier participation in the U.S. telecommunications market via radio-based facilities. While a case-by-case approach has otherwise been generally effective because general policies have been established through rulemaking proceedings as described above, the specific context of Section 310(b) itself warrants a further rulemaking. The ad

[7] It took four years for the Common Carrier Bureau to grant CWI's Section 214 application requesting authority to resell the services of other common carriers to Hong Kong, despite the fact that there were no oppositions filed. See File No. I-T-C-88-157 and Order, Authorization and Certificate, 7 FCC Rcd 4384 (1992). Similarly, it took 2 1/2 years to grant CWI's application to provide international private line services via resale. See File No. I-T-C-90-190 and Order and Certificate, 8 FCC Rcd 1664 (1993).

hoc history of the FCC's interpretations and enforcement of Section 310(b) has made FCC policies so unclear as to act as a virtual bar to expansion based on radio technologies.

Given the increasing growth of wireless services (such as International Satellite Services, Personal Communications Services, Low Earth Orbit Satellite services and cellular service), an overly restrictive application of Section 310(b) creates significant barriers to entry to the U.S. international and domestic markets. Yet, these radio-based services constitute a significant part of the future of the long-distance business, as evidenced by AT&T's acquisition of McCaw, Sprint's acquisition of Centel and its cellular operations, and MCI's highly publicized interest in PCS.

It would clearly be in the interests of the U.S. to alleviate the restrictive application of Section 310 on a bilateral basis between the U.S. and the U.K. The Commission has recently demonstrated flexibility in allowing certain transactions to proceed notwithstanding Section 310 implications, but it has not directly addressed the Section's full meaning. Specifically, it has not addressed when an outright "waiver" of Section 310(b)(4) might be appropriate and available. Accordingly, CWI agrees with AT&T to the extent its petition seeks a proceeding to govern the availability of Section 310 waivers, and the precise terms and conditions for waivers should be articulated.